

APPENDIX I

State Fees

I. Introduction

Twenty-eight¹ states levy some type of fee on shipments of radioactive material in order to fund services such as preparing emergency responders and inspecting radioactive materials shipments. The fees range from twenty-five dollars to forty-five hundred dollars for the initial rail cask. The question for the Department of Energy is how should DOE handle state fees in the context of the Section 180(c) program. The *1998 Draft Policy* on Section 180(c) did not address this issue.

State fees raise two questions for the Department. Would the Department be paying twice for some activities if it pays state fees and funds the state through 180(c)? And, if so, what can the Department do to meet its obligations under Section 180(c), comply with applicable state laws, and avoid paying twice for the same service?

II. Background

The DOE's General Counsel has suggested that paying a state's fee *and* granting Section 180(c) funds would constitute paying twice for the same activity and would not be allowed. This raises the question of whether fees *do* pay for the same activities as Section 180(c). If so, should 180(c) awards be adjusted to avoid double payment and, if so, how should that adjustment occur?

In some states, the revenue from the fee is used for a variety of activities, including training. Other states collect fees to cover the cost to the state of inspecting and/or escorting the shipment. Some states – Iowa and Oregon, for example – have a provision in their fee rule that gives the state the option of waiving the fee if the shipper provides an alternative source of funding (e.g., financial assistance from DOE).

DOE has interpreted Section 180(c) assistance as being strictly “for training.” Given this strict interpretation, 180(c) would not pay twice for activities in states whose fees pay for transportation operations such as escorts and inspections.

For states that collect fees to cover a broad range of activities – including training – one could argue that DOE would be justified in deducting a portion of the state fee from the state's award. For some states, one point *against* this argument is that state fees are collected at the time of or after shipments take place, whereas 180(c) assistance will be awarded for up to four years prior to shipments. If DOE were to deduct a portion of the fee from a state's award, that correction or adjustment should logically take place in the year shipments occur. There is a chance that such an adjustment might leave a state underfunded when it comes to training for the initial year's shipments. The Topic Group recommends resolving specific circumstances on a case-by-case basis.

¹ National Conference of State Legislatures, *Spent Fuel Transportation: History, Status, and State Involvement*, (Denver, Colorado: NCSL, March 2004)

III. Options Considered

Option 1: Require no link between Section 180(c) funds and state fees.

- This is the SRG preferred option.
- DOE, in some cases, would be paying twice for the same activities, unless the state agrees to separate the use of funds.

Option 2: Reduce 180(c) funds by a dollar amount equal to the state fee.

- This would limit states' ability to prepare early for shipments since fees are collected at or after time of shipment.
- DOE's Office of General Counsel has suggested that it would be inappropriate for states to charge a fee for these shipments and still receive the full amount of Section 180(c) funding.

Option 3: Require states to show no overlap between activities funded by Section 180(c) and fees.

- This option incorporates the SRG's recommendation that DOE consult with the states on a case-by-case basis.
- This option also addresses DOE General Counsel's concern over paying twice for the same services.

IV. Recommendations

The Topic Group recommends that DOE not deduct the cost of state fees from a state's Section 180(c) award unless separately negotiated with the state.